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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,631	03/22/2004	Richard D. Wasmund JR.		1461

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EXAMINER	
WEINSTEIN, STEVEN L	
ART UNIT	**PAPER NUMBER**
1761	

MAIL DATE	DELIVERY MODE
08/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/805,631	WASMUND, RICHARD D.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujii (JP 11-276151) and Kleinbrennerei (1997, 49,10,231-233), further in view of Duggins (4,173,656), Yocum (2,064,330), Barbier et al (EP 634108), applicant's admission of the prior art, Tagaki (JP 55-88692), Bodorev et al (RU2213137), Pennington (WO 97/42303), Sanishi (JP2002-65239), Nickol (2,807,547), Pritchett (1,976,091), McCabe (3,386,832), Analytica Chimica Acta (458,1,p55-62, 4/29/02), and Journal of Wine Research (2001, 12, 3, 175-182), essentially for the reasons given in the Office Action mailed 11/3/06 as modified in view of the newly presented claims.

In regard to claim 26, Fujii discloses improving the flavor of whisky comprising immersing fruitwood in the whiskey. Kleinbrennerei is relied on as further evidence of adding a fruitwood to an alcoholic beverage to age/mature/enhance the flavor of the beverage. Claim 26 differs from Fujii in the particular fruitwood employed. Claim 26 recites applewood whereas Fujii employs cherry. Since the art taken as a whole discloses it was conventional to employ a fruitwood to age and impart flavoring to the alcoholic beverages (as well as employing many other woods to age alcoholic beverages as evidenced by Duggins, Yocum, Barbier et al, applicant' admission of the prior art, Tagaki, Bodorev et al, Pennington, Saneishi, Nickol, Pritchett, McCabe, Analytica Chimica Acta, and J. of Wine research), the particular fruitwood selected to

age the beverage, i.e., applewood, is seen to have been an obvious matter of choice and personal taste, routinely determinable, and a function of whatever nuanced flavor one chooses to impart to the beverage. Claim 26 also recites that the wood is present in the form of multiple chips. As was noted previously, Fujii is silent in this regard. However, once it was known that liquids exposed to wood can have their flavor enhanced, the particular shape or size of the piece or pieces of wood would have been an obvious result effective variable, derivable through routine determinations. In any case, Barbier et al, who discloses wood chips of various sizes (as well as kinds of wood) have been employed in the prior art and, in fact, discloses wood pieces that can be termed "chips" (since they are within the disclosed range of both thickness and surface area. See, in this regard, page 4, para.1 of Barbier et al. Note that the further reduction in size in Barbier et al is only a preference. It is not disclosed that the wood must further be reduced. See also Bodorev et al, who also teaches wood chip dimensions in the disclosed range. To therefore modify the combination and employ chips would therefore have been obvious. In regard to claim 27, the immersion step would inherently occur during the maturation process. In regard to claim 28, which recites the wood is toasted before immersing, Fujii appears to be silent in this regard. However, the art taken as a whole, including applicant's admission of the prior art, Duggins, Yocum, Barbier et al, McCabe, etc., disclose it was notoriously conventional to toast (also known as char) the wood that is to be used in enhancing the flavor of liquids. The art taken as a whole discloses that charred wood generally imparts a more preferred effect than wood that has not been charred. To therefore char the wood of

Fujii, if indeed it is not charred, would therefore have been obvious. Claim 29 is rejected for the reasons given above.

All of applicant's remarks filed 5/23/07 have been fully and carefully considered but are not found to be convincing. It is urged that the art does not suggest the use of applewood chips to age whiskey. This urging is not convincing. As noted previously, and above, not only does the art teach that many different woods have been used to age alcoholic beverages, but fruit woods have also been used to age alcoholic beverages. The art taken as a whole therefore fairly suggests that there would be a reasonable chance of success for an alcoholic beverage to be aged by applewood – a known fruitwood. Stated somewhat differently, the art taken as a whole is seen to have been a generic teaching to employ woods, and fruitwoods in particular, and the selection of applewood would have been an obvious matter of choice, routinely determinable. It is urged that no specific reference teaches applewood, and therefore the invention is novel. Obviously, if one reference had taught applewood, the rejection would have been under 35USC102, anticipation. This rejection has not been made, and the claims are novel in view of the art cited. However, the claims are not rejected as being anticipated, but rather are rejected as being obvious under 35USC103. Also, the absence of a specific statement in the art that applewood can age an alcoholic beverage does not imply a teaching away from the invention, but rather just a lack of anticipation in the prior art of the claimed invention. To be patentable, the claims must also be unobvious. Finally, it is urged that the flavor of the whiskey is altered to a surprising – and pleasant – degree. This urging of a presumably unexpected result is

not supported by any probative quantitative data. One would expect nuanced differences in flavor between different woods that may or may not be sensed by the consumer. There is no evidence that the flavor is altered to a surprising degree relative to other woods, fruit or otherwise. Also, a pleasant flavor is a matter of personal taste.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
8/1/07